



DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection for Labor Condition Application and Instructions for H-1B, H-1B1, and E-3 Nonimmigrants; ETA Forms 9035, 9035E, 9035CP; and WHD Nonimmigrant Worker Information Form WH-4, extension with revisions.

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on the proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)]. This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, ETA is soliciting comments concerning the collection of data of the approved information collection, Office of Management and Budget (OMB) Control Number 1205-0310, containing Form ETA 9035 - Labor Condition Application for Nonimmigrant Workers; Form ETA 9035E - Labor Condition Application for Nonimmigrants (electronic version); Form ETA 9035CP - General Instructions for the

9035 & 9035E; and Wage and Hour Division (WHD) Form WH-4 - Nonimmigrant Worker Information Form, which expire on March 31, 2015. In order to meet its statutory responsibilities under the INA, the Department is revising the existing collection of information pertaining to employers seeking to apply for labor condition applications to allow them to bring foreign labor to the U.S. on a temporary basis. The Secretary uses the collected information to determine if employers are meeting their statutory and regulatory obligations.

DATES: Written comments must be submitted to the office listed in the addressees section below on or before [INSERT DATE – 60 DAYS FROM PUBLICATION DATE].

ADDRESSES: Submit written comments to William L. Carlson, Ph.D., Administrator, Office of Foreign Labor Certification, Room C-4312, Employment & Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. Telephone number: 202-693-3010 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1-877-889-5627 (TTY/TDD). Fax: 202-693-2768. E-mail: ETA.OFLC.Forms@dol.gov subject line: Revised Form ETA 9035. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed above.

SUPPLEMENTARY INFORMATION:

I. Background

The information collection is required by sections 212(n) and (t) and 214(c) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(n) and (t) and 1184(c)). The

Department and the Department of Homeland Security have promulgated regulations to implement the INA. Specifically for this collection, 20 CFR 655 Subparts H and I and 8 CFR 214.2(h)(4) are applicable. The INA mandates that no alien may enter the United States (U.S.) for the purpose of performing professional work on a temporary basis unless the U.S. employer has attested to the Secretary of Labor (Secretary) that the working conditions for the alien will not adversely affect the working conditions of similarly employed U.S. workers; that the salary will be at least the prevailing wage for the occupational classification in the area of employment or the actual wage paid by the employer to all other individuals with similar experience and qualifications to that of the foreign worker for the specific employment in question— whichever is higher; that there is no strike or lockout in the course of a labor dispute in the occupational classification at the place of employment; and that the employer has met all other requirements of the program as specified in the regulations. The Department’s review of the attestations is limited to obvious errors and inaccuracies. The Department has revised the information collection instruments included in this information collection request to clarify certain elements of the information collection and enhance the integrity of the labor attestation process. In the past the respondents have been for-profit businesses and not-for-profit institutions. On rare occasions the respondents have been local, State, tribal governments, or the Federal government.

The Department has proposed changes to this collection. As a result of recommendations from both the Government Accountability Office (GAO) and the Department’s Office of the Inspector General (OIG), as well as sister agencies, the Department seeks to revise the scope of information collected in the context of H-1B, H-

1B1 and E-3 applications in order to enhance its integrity review for obvious errors, omissions and inaccuracies under 20 CFR 655.730(b). The revised collection will allow the Department to improve its integrity review and ensure the accuracy and completeness of the information.

II. Review Focus

The Department is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

Type of Review: Extension with revisions.

Title(s): Labor Condition Application Nonimmigrants (H-1B, H-1B1 and E-3 visa programs) and Nonimmigrant Worker Information Form.

OMB Control Number: 1205-0310.

Affected Public: Businesses or other for-profits, not-for-profits, States, local governments, and tribal governments.

Form(s): Forms ETA 9035, ETA 9035E, ETA 9035CP and WHD Form WH-4.

Total Annual Respondents: 77,425.

Annual Frequency: On occasion.

Total Annual Responses: 1,129,000

Average Time per Response: 25 minutes

Estimated Total Annual Burden Hours: 479,666

Total Annual Burden Cost for Respondents: \$0

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record.

Signed at Washington, D.C., on this 27th day of June 2012.

Jane Oates,

Assistant Secretary for Employment & Training

BILLING CODE 4510-FP-P

[FR Doc. 2012-16587 Filed 07/06/2012 at 8:45 am; Publication Date: 07/09/2012]